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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re JACK H., a Person Coming Under the
Juvenile Court Law.

SAN FRANCISCO DEPARTMENT OF
HUMAN SERVICES,

Plaintiff and Respondent,

v.

OLIVIA H., et al.,

Defendants and Appellants.

A106207

(San Francisco County
Super. Ct. No. JD03-3375)

Olivia H. (Mother) and Chandler H. (Father) appeal from the dispositional order in the dependency proceeding for their son, Jack H., born in December 1999. Mother raises various arguments challenging the jurisdictional finding and dispositional order, and Father contests the court's decision to continue jurisdiction in the matter. Respondent has moved to dismiss the appeals as moot.

The record insofar as it bears on the motion to dismiss is as follows:

Mother and Father were never married. Jack resided with Mother from the time he was born until the summer of 2003, when Mother's psychiatric problems led to a series of hospitalizations and the filing of the dependency petition on August 15, 2003.

Father was involved in Jack's life before the dependency proceeding was instituted, and Jack has resided with Father since he was detained.

On March 26, 2004, after a contested jurisdictional and dispositional hearing, and pursuant to the finding and order at issue in these appeals, the court declared Jack to be a dependent, continued Jack in Father's care with visitation by Mother, and continued jurisdiction over Jack with reunification services to Mother. We hereby grant respondent's request to take judicial notice of the order filed in the case on January 21, 2005, terminating the juvenile court's jurisdiction over Jack and transferring the case to family court in Santa Cruz County, where Father and Mother now both reside. (Evid. Code, §§ 452, subd. (d)(1), 459, subd. (a).) The exit order awards Father and Mother joint legal and physical custody of Jack, provides that Jack's primary residence will be with Father, and sets forth a minimum visitation schedule for Mother, which is modifiable with Father and Mother's mutual agreement.

In view of the exit order, respondent argues that Father's and Mother's appeals should be dismissed as moot. We grant the motion to dismiss, which Father has not opposed, as to his appeal. Now that the juvenile court has dismissed its jurisdiction over Jack, the object of Father's appeal has been attained and no further relief can be granted.

Mother opposes the motion to dismiss on various grounds.¹ "In juvenile cases, when an issue raised in a timely notice of appeal continues to affect the rights of the child or the parents, the appeal is not necessarily rendered moot by the dismissal of the underlying dependency." (*In re Hirenia C.* (1993) 18 Cal.App.4th 504, 517-518.) In *In re Joshua C.*, *supra*, 24 Cal.App.4th 1544, for example, the juvenile court made jurisdictional findings unfavorable to the father, entered a dispositional order awarding

¹ On our own motion, we hereby take judicial notice of the notice of appeal that Mother has filed from the exit order. (*In re Jack H.*, Appeal No. A109328.) The notice of appeal from the exit order states that it has been filed to preserve the issues in Mother's current appeal. (See *In re Michelle M.* (1992) 8 Cal.App.4th 326, 330 [failure to appeal from exit order renders appeal from earlier orders moot because no direct relief can be granted after exit order becomes final]; compare *In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1548-1549 [where juvenile court's jurisdiction is challenged at first opportunity, challenge to exit order is not required].)

the mother sole custody and restricting the father's visitation, and terminated dependency jurisdiction. The appellate court rejected a motion to dismiss the father's appeal from the dispositional order. The opinion noted that the father would be collaterally estopped from relitigating the jurisdictional issues in family court, and reasoned: "As the jurisdictional findings are the basis for the restrictive visitation and custody orders, error in the former undermines the foundation for the latter. [¶] The fact that the dependency action has been dismissed should not preclude review of a significant basis for the assertion of jurisdiction where exercise of that jurisdiction has resulted in orders which continue to adversely affect appellant." (*Id.* at p. 1548.)²

Here, the jurisdictional finding and dispositional order do not continue to adversely affect Mother because, unlike the father in *Joel H.*, she retains joint legal and physical custody of Jack under the exit order,³ and is not subject to restrictive visitation. (Compare *In re Hirenia C.*, *supra*, 18 Cal.App.4th at p. 518 [issues raised in appeal were "still very 'live' controversies" and thus not moot].) Mother identifies no prejudice currently suffered as a result of the finding and order, and can only speculate on the harm they may possibly cause her in the future. Such speculation is insufficient to avoid a finding of mootness.

Mother contends that the finding and order will be detrimental to her in the event a new dependency proceeding for Jack is contemplated or filed. (See *In re Dylan T.* (1998) 65 Cal.App.4th 765, 769 [issue is not moot if the "purported error infects the outcome of subsequent proceedings"].) Mother submits that the fact that a petition was found to be

² While *Joshua C.* contains language suggesting that alleged jurisdictional errors are never moot, the opinion cannot stand for that proposition because it also acknowledges that mootness " 'must be decided on a case-by-case basis.' " (*In re Joshua C.*, *supra*, 24 Cal.App.4th at p. 1547.) As we read *Joshua C.*, the decisive question is whether the challenged rulings continue to adversely affect the appellant when the mootness issue is raised.

³ At the conclusion of the jurisdictional and dispositional hearing, the court noted that there was no evidence of a previous sole custody order, "and so the presumption before this matter came in to court was that there was joint custody." (See Fam. Code, § 3010, subd. (a); *In re Phoenix B.* (1990) 218 Cal.App.3d 787, 794.) Thus, insofar as custody is concerned, the exit order merely restored the pre-dependency status quo.

true would militate in favor of: filing a new petition if one is being considered; finding any new petition to be true; and denying her services if a new petition is sustained.

The case most on point with respect to the future petition arguments is *In re Joel H.* (1993) 19 Cal.App.4th 1185, 1193. There, the minor was placed with his great-aunt, and then ordered permanently removed from the aunt's physical custody based on a finding of abuse. After the aunt appealed from the removal order, the minor was returned to the mother's custody, and dependency jurisdiction was terminated. The court declined to dismiss the aunt's appeal as moot because a future dependency proceeding for the minor was, "[r]egrettably, . . . entirely possible given the family history," and the res judicata effect of a final removal order would prevent the minor from being placed with the aunt in any such proceeding. (*Id.* at p. 1193.) In those circumstances, a finding of mootness might prove detrimental to the child. (*Ibid.*) Here, unlike *Joel H.*, there is no reason to anticipate another dependency proceeding, and the challenged finding and order will not preclude Mother from retaining custody of Jack if a new petition is filed. Nor will Jack be prejudiced by the finding and order in the event of a new dependency proceeding because the course of that proceeding will be dictated by his best interests. *Joel H.* is thus distinguishable and provides no persuasive support for Mother's future petition arguments.

Mother contends that she will be hampered by the jurisdictional finding and dispositional order if she seeks to modify custody and visitation under the exit order. Because those provisions of the exit order cannot be modified unless there has been "a significant change of circumstances since the juvenile court issued the order" (Welf. & Inst. Code, § 302, subd. (d)), Mother reasons that the family court would be "virtually obligated to obtain the entire juvenile court file pursuant to section 827," and to consider the challenged finding and order, if any modification is sought. However, by the terms of section 302, subdivision (d), the circumstances at issue in connection with a modification of custody or visitation will be those that existed when the exit order was entered and those that exist when the modification is requested. Circumstances preceding entry of the

exit order, including the finding and order at issue, will not determine whether the modification is granted.

Mother contends that the jurisdictional finding “will subject her to substantial financial liability for reimbursement costs in the future” under Welfare and Institutions Code section 903, subdivision (a), which makes a parent liable for “the reasonable costs of support of the minor while the minor is placed, or detained in, or committed to, any institution or other place . . . pursuant to an order of the juvenile court.” However, since Jack was placed with Father at all times after his detention, it is not apparent that there are any reimbursable “costs of support” in this case. (See § 903, subd. (c) [“costs of support” mean “only actual costs incurred by the county for food and food preparation, clothing, personal supplies, and medical expenses”].)

Mother maintains that we should entertain the appeal, even if it is otherwise moot, because it raises issues of general interest. However, while we recognize that no case is unimportant to the litigants, the issues presented here are specific to the parties and the evidence.

We therefore conclude that respondent’s motion should be granted as to Mother’s appeal as well.

The appeals are dismissed.

Kay, P.J.

We concur:

Reardon, J.

Rivera, J.